

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JAMIE LEIGH JONES,
PLAINTIFF,

v.

HALLIBURTON COMPANY D/B/A
KBR KELLOGG BROWN & ROOT
(KBR); KELLOGG BROWN & ROOT
SERVICES, INC.;
DEFENDANTS.
.

TRANSCRIPT OF JURY TRIAL
BEFORE THE HONORABLE KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE

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P R O C E E D I N G S

(Jury not present)

THE COURT: The first sentence was originally, "The injury referred to in Question 7D is intended to refer to any injury Jamie Leigh Jones may have suffered."

And now we have "any injury Jamie Leigh Jones suffered." It's not grammatically incorrect, but I think we're making a statement that she suffered.

MS. VORPAHL: Saying she suffered.

THE COURT: So, I'm going to put "may have" back in there.

MS. VORPAHL: I think it's fine.

Your Honor, it seems a bit redundant at the beginning. Could we just say, "Question 7D is intended to refer to any injury"? I mean --

THE COURT: We gave them what I thought was too brief an answer yesterday. I think a fuller exposition is better; so, I'm going to go with this.

MS. VORPAHL: Okay.

THE COURT: Thank you very much.

(Recess was taken from 12:10 p.m. to 1:40 p.m.)

(Jury not present)

THE COURT: Okay. We all have the question. It is Jury Note 4, "Can a "misrepresentation" be an omission or must a false statement of fact be explicit?"

01:40 1 We really have answered this question, I think,
2 in the last line of Jury Question Number 7. We say, "A
3 misrepresentation means a false statement of fact." So, I
4 propose we go back to them with, "It cannot be an omission. It
01:40 5 must be explicit."

6 MR. KELLY: Your Honor, I think the reason that that
7 is confusing is because I think the reason it's being asked --
8 and this is kind of a fine line -- but there is -- we talked
9 about this in the motion for directed verdict. I know the
01:40 10 Court ruled against us on that. But the difference here
11 between "explicit" and "act of omission" versus "act of
12 commission" is important.

13 In this case we have alleged and we think we have
14 proven and we think this is the reason for the jury question,
01:40 15 in fact, is that there is concealment and it is active. This
16 is not simply an act or a failure to act. This is an act of
17 hiding the bad acts, which is why I think that our response is
18 appropriate, because it talks about concealment. And the act
19 of concealment may not be an explicit representation. In fact,
01:41 20 it is explicitly not a representation about something that the
21 defendant knew and hid actively, didn't simply fail to inform
22 but actively hid.

23 THE COURT: Well, I do think there's something to what
24 you say in that every -- every statement reveals something and
01:41 25 conceals something. That's just the nature of statements. But

01:41 1 I do believe that the law in Texas is that employers don't have
2 a duty to disclose every negative fact that might be in their
3 minds.

01:41 4 MR. KELLY: The word "explicit" is the word that I
5 think is an incorrect statement of the law. Because I don't
6 think it has to be an explicit statement, your Honor. It can
7 be an explicit act; in other words, the explicit act of
8 concealing.

01:42 9 THE COURT: Well, the only reason I was going to use
10 "explicit" is that's what the jury uses. And I think we get
11 ourselves in trouble when we don't answer their questions.

01:42 12 MR. KELLY: Well, but I think the answer is the that
13 "explicit" is wrong. I think if we tell the jury it needs to
14 be explicit, even though that's their word, I think that's an
15 incorrect statement of the law, your Honor, because I don't
16 think it has to be explicit.

01:42 17 THE COURT: Should we just go back to the jury
18 instructions, "it means a false statement of fact"? Shall we
19 say, "It cannot be an omission. It must be a false statement
20 of fact"?

21 MR. KELLY: Yes. I think, "A false statement" -- "It
22 must be a false statement of fact" I think is accurate. I
23 think --

01:42 24 MR. ESTEFAN: That's the instruction they've been
25 given.

01:42 1 THE COURT: That's what we've already told them, yeah.

2 MR. KELLY: I think to tell them that it has to be
3 explicit is overstating the law, your Honor. I don't think
4 that's what the law is.

01:42 5 MS. VORPAHL: Well, I mean, I think that is what the
6 law is and I think you did rule against the plaintiffs and I
7 think you're right that we should answer the question that
8 they've asked. And, so, I would favor "explicit"; but I gave
9 you both of those.

01:43 10 THE COURT: You did.

11 MS. VORPAHL: You know, I would like for it to say
12 that "it must be explicit" or "it must be an affirmative
13 misrepresentation." That's the question they're asking.

14 THE COURT: It is. Mr. Kelly is just worried about we
01:43 15 perhaps have -- in the language we choose, we overstate the
16 law. And it is a little bit of a tail chaser. I do agree, in
17 that every statement leaves out something. You know, if you
18 say it was safe but we're not going to tell you about the
19 rapes --

01:43 20 MR. McKINNEY: Why don't you say, "It must be an
21 actual statement" and not -- and nothing else?

22 MS. VORPAHL: "Cannot be an omission" -- "it must be a
23 statement of fact," "it must be an affirmative
24 misrepresentation."

01:44 25 MR. KELLY: Your Honor --

01:44 1 MS. VORPAHL: I mean, I think those are both correct
2 statements of the law. As do I think the previous proffer is.

3 MR. KELLY: It's similar -- I'm using this as an
4 analogy and it's a fairly loose one, I recognize, your Honor.
01:44 5 But it's similar to when drug manufacturers know that they're
6 testing cohort produces a high number of some health risk and
7 they fail to disclose that. It's an act of concealment.

8 THE COURT: No. The field of health is heavily
9 regulated, and that's specifically controlled by the FDA and
01:44 10 others. An employer doesn't fit into that category.

11 MR. KELLY: I understand, but I'm using the analogy
12 only to show essentially what we're alleging here and that is
13 that in this case they had a very high incidence of sexual
14 harassment and assault, at least -- I understand they dispute
01:44 15 that, but that's our case -- that they had a very high
16 incidence of sexual harassment and assault and that they didn't
17 simply fail to disclose but that they actively concealed that
18 fact.

19 Had they simply failed to disclose, then I think
01:45 20 that the defense is right under the law, whether I agree with
21 the law or not. However, they didn't simply fail to disclose.
22 They actively concealed. And because of that, I think that
23 that question is way too limiting and doesn't get to that
24 particular fact, which is that they actively concealed.

01:45 25 MS. VORPAHL: That is a different cause of action, a

01:45 1 fraudulent concealment action. They didn't plead that, and
2 they're now trying to slide that in under a jury question.

3 MR. KELLY: We pled fraud.

01:45 4 MR. MCKINNEY: It really sounds to me -- it sounds
5 like a fraudulent concealment claim, and it also sounds like a
6 failure to warn claim, which is a product liability theory.
7 It's not a theory of employment law. And if it were, you would
8 be writing new Texas law.

9 THE COURT: No. That's what I am worried about.

01:45 10 MR. KELLY: That was used only as an analogy. I'm not
11 trying to make it a product liability case. That's
12 far-fetched.

13 THE COURT: Well, I'm going to go back and decide
14 this. I understand the points of disagreement.

01:46 15 MR. HEDGES: Your Honor, I think the main question is,
16 "Can it be an omission?" I think that's what they're really
17 asking. If you say, "It cannot be an omission" and then add
18 the -- basically the language that was already there, that
19 ought to answer their question.

01:46 20 THE COURT: Thank you very much.

21 MS. VORPAHL: Thank you, Judge.

22 *(Recess was taken from 1:46 p.m. to 2:47 p.m.)*

23 *(Jury not present)*

02:47 24 THE COURT: Keep your seats. All right. We've been
25 consulting a few dictionaries. The question is, "What does

02:47 1 "induce" mean?

2 Webster says, "to lead on to some action,
3 condition, belief, et cetera; prevail on, persuade."

4 The Free Dictionary online says, "to lead or move
02:47 5 to a course of action by influence or persuasion; synonyms are
6 persuade."

7 The Encardia dictionary says, "induce means
8 persuade to do something, to persuade or influence somebody to
9 do or think something."

02:48 10 They're all -- and Black's -- let's see what
11 Black's says -- legal dictionary, says, "to induce, to bring on
12 or about to effect, to cause, influence to an act or course of
13 conduct, lead by persuasion or reasoning."

14 I'm think -- I think we do need to keep our
02:48 15 answers simple. I think we can just go back and say, "It means
16 to cause or persuade."

17 MS. VORPAHL: Your Honor, I took my PJC back to my
18 office last night, which wasn't smart. But is there a PJC
19 definition of "induce"?

02:48 20 We tried to get it online, and you've got to be a
21 subscriber. So, we've got someone running it over.

22 I'll be happy to look. We independently came up
23 with "inducement" in Black's, which says about yours. And I
24 realize it's not the same word. It is the noun form. It says,
02:49 25 "the act or process of enticing or persuading another person to

0 2 : 4 9 1 take a certain course of action" and then it says, "see fraud
2 in the inducement under fraud." We're trying to get that in
3 Black's right now. So, if we could have just a couple of
4 minutes to see if there's a PJC definition and to see what
0 2 : 4 9 5 Black's says with regard to fraud in the inducement -- I think
6 we're close, but I want to make sure we --

7 MR. KELLY: It doesn't ask about "fraud in the
8 inducement," your Honor. It asks about "inducement," your
9 Honor. I'm perfectly fine with "cause or persuade," as the
0 2 : 4 9 10 Court suggested.

11 The question asks about the word "induce." It
12 doesn't ask about "fraudulent inducement."

13 THE COURT: I know.

14 MS. VORPAHL: It's not my intention to repeat anything
0 2 : 4 9 15 about fraud. I just think we ought to look at that. And,
16 so -- and we're trying to do that. And I'm sorry that --

17 THE COURT: Okay. Well, I'll go back to chambers.

18 MS. VORPAHL: Thank you, your Honor. We'll hurry as
19 fast as we can.

20 *(Recess was taken from 2:50 p.m. to 3:23 p.m.)*

21 *(Jury present)*

22 THE COURT: Thank you. Please be seated.
23 Mr. Foreman, without telling me what your verdict is, have you
24 indeed reached a verdict, sir?

0 3 : 2 3 25 A JUROR: Yes, we have.

03:23 1 THE COURT: Could you provide the verdict form to
2 Mr. Bagwell?

3 A JUROR: (Complies).

4 THE COURT: Okay. Jury Question Number 1, "Did
03:23 5 Charles Bortz rape Jamie Leigh Jones on or around July 27 or
6 28th, 2005?"

7 The jury answers, "No."

8 THE CASE MANAGER: They can't hear you.

9 THE COURT: The jury answered "No" to Question 1.

03:24 10 I'll try it again. The question was, "Did
11 Charles Bortz rape Jamie Leigh Jones?"

12 The jury answered, "No."

13 Jury Question Number 7, "Did KBR commit fraud
14 against Jamie Leigh Jones by inducing her to enter into the
03:24 15 employment contract?"

16 The jury answers, "No."

17 The -- other than Question 1 and Question 7, the
18 other questions did not need to be answered because of the
19 answers to those two questions.

03:25 20 This will complete your service on the jury,
21 ladies and gentlemen. You will receive from us a letter of
22 thanks and a certificate that commemorates your service.

23 For now, on behalf of all of us, your time, your
24 patience, your hard work, and your commitment, for all of those
03:25 25 we thank you and we salute you. Your service on this jury has

03:25 1 been in the highest traditions of our constitutional heritage.

2 Would all please rise for the jury?

3 (*Jury released at 3:25 p.m.*)

4 (*End of requested proceedings*)

5 * * * * *

6 COURT REPORTER'S CERTIFICATION

7 I certify that the foregoing is a correct transcript from
8 the record of proceedings in the above-entitled cause.

9 Date: July 8, 2011

10
11 /s/ Cheryll K. Barron

12 Cheryll K. Barron, CSR, CMR, FCRR
13 Official Court Reporter
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